

ESTTA Tracking number: **ESTTA125496**

Filing date: **02/16/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

|                                       |   |
|---------------------------------------|---|
| Name                                  | InfoDot, LLC  |
| Granted to Date of previous extension | 02/18/2007  |
| Address                               | 30772 Southview Drive #140<br>Evergreen, CO 80439<br>UNITED STATES  |
| Correspondence information            | Tara A. Branscom<br>1800 Wachovia Tower, Drawer 1200<br>Roanoke, VA 24006<br>UNITED STATES<br>trademarks@leclairryan.com Phone:540-510-3000 |

### Applicant Information

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 78771196   | Publication date       | 08/22/2006 |
| Opposition Filing Date | 02/16/2007   | Opposition Period Ends | 02/18/2007 |
| Applicant              | Key Surgical Incorporated<br>11000 West 78th Street<br>Eden Prairie, MN 55344<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|  |
|--|
| Class 016. First Use: 2003/09/02 First Use In Commerce: 2003/09/02<br>All goods and services in the class are opposed, namely: Circular adhesive labels printed, etched or stamped to show a bar code, data matrix, text, symbology, code, images, and/or numerals used in automatic identification systems to be attached or applied to or printed, etched, or imaged on various medical instruments and products |
|--|

|             |   |
|-------------|---|
| Attachments | Opposition.PDF ( 6 pages )(156288 bytes ) |
| Signature   | /tara a. branscom/                        |
| Name        | Tara A. Branscom                          |
| Date        | 02/16/2007                                |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 78/771,196  
For the mark INFODOT  
Published in the Official Gazette on August 22, 2006

|                           |   |                       |
|---------------------------|---|-----------------------|
| InfoDot, LLC              | ) |                       |
|                           | ) |                       |
| Opposer,                  | ) |                       |
|                           | ) | Opposition No.: _____ |
| v.                        | ) |                       |
|                           | ) |                       |
| Key Surgical Incorporated | ) |                       |
|                           | ) |                       |
| Applicant.                | ) |                       |
|                           | ) |                       |

**NOTICE OF OPPOSITION**

Opposer, InfoDot, LLC, (“Opposer”), a Colorado limited liability company, located and doing business at 30772 Southview Drive #140, Evergreen, Colorado, believes that it is or will be damaged by the registration on the Principal Register of the trademark INFODOT, Application Serial No. 78/771,196 filed by Key Surgical Incorporated, doing business at 11000 West 78<sup>th</sup> Street, Eden Prairie, Minnesota, and hereby opposes the same upon the following grounds:

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

1. Since March 1, 2002, Opposer has adopted and used the trademark INFODOT in connection with circular blank, printed and partially printed labels and two dimensional barcode labels used for identification purposes in both medical and non-medical fields of use.

2. Opposer filed Application No. 76/653292 on January 12, 2006 for the trademark INFODOT for “paper goods, namely circular blank, printed and partially printed labels and two dimensional barcode labels” in Class 016.
3. Opposer supplies and sells its INFODOT labels either directly to end users or to distributors for distribution to end users.
4. Applicant has been a distributor of Opposer’s INFODOT labels in the medical field of use since approximately May, 2003.
5. Opposer has expended substantial monies in marketing, advertising and promoting the INFODOT mark in connection with its goods in interstate commerce in the United States.
6. Upon information and belief, Applicant operates for-profit.
7. Notwithstanding Opposer’s established prior use of the INFODOT mark and the knowledge of Applicant of Opposer’s prior use of and rights in the INFODOT mark in connection with Opposer’s goods, Applicant filed on December 12, 2005 in the United States Patent and Trademark Office an application for trademark registration of the mark INFODOT for “circular adhesive labels printed, etched or stamped to show a bar code, data matrix, text, symbology, code, images, and/or numerals used in automatic identification systems to be attached or applied to or printed, etched, or imaged on various medical instruments and products” in Class 016 (Application Serial No. 78/771,196).

COUNT I - FRAUD

8. Opposer hereby incorporates allegations contained in paragraph nos. 1-7 by reference herein.

9. At all times relevant hereto, Applicant was a distributor of Opposer's goods bearing Opposer's INFODOT mark and accordingly clearly had knowledge of Opposer's rights in the INFODOT mark in connection with Opposer's goods.
10. Opposer did not authorize or consent to Applicant's U.S. trademark application for Opposer's INFODOT mark.
11. Applicant through its attorney submitted a sworn declaration to the United States Patent and Trademark Office in its application for registration of INFODOT (Application Serial No. 78/771,196) that Applicant believed that Applicant was the owner of the mark sought to be registered and to the best of its knowledge and belief no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.
12. Applicant was and is not the owner of the INFODOT mark as alleged in Applicant's application for U.S. Trademark Registration.
13. Opposer and Opposer's authorized distributors through Opposer were using and had the right to use the INFODOT mark at the time of Applicant's application for U.S Trademark Registration and have continuing rights to use the INFODOT mark, despite Applicant's declaration to the contrary.
14. Upon information and belief, Applicant knowingly falsely alleged Applicant's ownership of the INFODOT mark in Application Serial No. 78/771,196 with intent to deceive the United States Patent and Trademark Office in order to obtain registration for Applicant's INFODOT mark. Applicant's false statement was a material misrepresentation.

15. Upon information and belief, Applicant's application was signed with the knowledge that another party had a right to use the INFODOT mark in commerce on the same or similar goods, with intent to deceive the United States Patent and Trademark Office in order to obtain registration for Applicant's INFODOT mark. Applicant's false statement was a material misrepresentation.
16. Application No. 78/771,196 is void *ab initio* because Applicant was not the owner of the INFODOT mark at the time that the application was filed.
17. Application No. 78/771,196 is void *ab initio* because Applicant's application was signed with the knowledge that another party had a right to use the mark in commerce on the same or similar goods.

#### COUNT II – LIKELIHOOD OF CONFUSION

18. Opposer hereby incorporates the allegations contained in paragraph nos. 1-17 by reference herein.
19. The INFODOT mark for which Applicant is seeking registration is identical to the INFODOT mark which is used by Opposer.
20. Upon information and belief, the goods for which Applicant is seeking registration of the INFODOT mark are substantially similar to the goods in connection with which Opposer uses its INFODOT mark.
21. Upon information and belief, the goods for which the Applicant is seeking registration of its INFODOT mark are offered to the same classes of customers that Opposer offers its goods in connection with the INFODOT mark.

22. Upon information and belief, the goods for which the Applicant is seeking registration of its INFODOT mark are offered through the same channels of trade that Opposer offers its goods in connection with the INFODOT mark.
23. Applicant's INFODOT mark is confusingly similar to Opposer's INFODOT mark and use thereof by the Applicant on the goods specified in Trademark Application Serial No. 78/771,196 is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer or are otherwise endorsed, sponsored, or approved by Opposer, whereby Opposer will be damaged by the registration of Applicant's INFODOT mark on the Principal Register of the United States Patent and Trademark Office;
24. If Applicant is granted registration of its claimed INFODOT mark as shown in Application Serial No. 78/771,196, Applicant will thereby obtain the *prima facie* exclusive right to use such mark in the United States, and such registration will impair and diminish Opposer's goodwill and right in its INFODOT mark thereby causing irreparable damage and injury to Opposer. Therefore, Opposer opposes registration of Applicant's INFODOT mark.


**PRAYER FOR RELIEF**

**WHEREFORE**, Opposer prays that Application Serial No. 78/771,196 be rejected and that Registration of the INFODOT mark for the goods specified therein be refused and that Opposer be awarded such further relief as this Board deems just and proper.

Respectfully submitted,

February 16, 2007

By:

  
\_\_\_\_\_  
Tara A. Branscom, Esq.  
David J. Sensenig, Esq.

LECLAIR RYAN, A PROFESSIONAL CORPORATION  
1800 Wachovia Tower, Drawer 1200  
Roanoke, VA 24006